

*United States District Court
Northern District of Texas*



**CRIMINAL JUSTICE ACT
PLAN**

Miscellaneous Order No. 3
Revised June 2000

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
MISCELLANEOUS ORDER NO. 3**

**CURRENT PLAN FOR THE REPRESENTATION OF DEFENDANTS
UNDER THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED**

I. AUTHORITY.

Pursuant to the provisions of Criminal Justice Act of 1964 (18 U.S.C. § 3006A) as amended (“Act”), the judges of the United States District Court for the Northern District of Texas adopt this Criminal Justice Act Plan (“Plan”) for furnishing quality representation in federal court for any person financially unable to obtain representation.

II. DEFINITIONS.

- A. “Representation” includes counsel and investigative, expert, and other services.
- B. “Appointed attorney” includes private attorneys, the Federal Public Defender, and staff attorneys of the Federal Public Defender’s Office.

III. PROVISION OF REPRESENTATION.

A. Circumstance.

- 1. Mandatory. Representation shall be provided for any person eligible pursuant to 18 U.S.C. § 3006A who:
 - a. is charged with a felony or a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. is charged with a violation of probation or parole;

- d. is under arrest, when such representation is required by law;
- e. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- f. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
- g. is in custody as a material witness;
- h. is entitled to appointment of counsel under the sixth amendment to the Constitution;
- i. faces loss of liberty in a case, and federal law requires the appointment of counsel;
- j. is entitled to appointment of counsel under 18 U.S.C. § 4109; or
- k. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255.

2. Discretionary. Representation may be furnished for a person eligible pursuant to 18 U.S.C. § 3006A in an ancillary matter appropriate to the proceeding pursuant to subsection (c) of the Act. Also, whenever a judge or magistrate judge determines the interests of justice so require, representation may be provided for any eligible person who:

- a. is charged with a class B or C misdemeanor or an infraction for which a sentence to confinement is authorized; or
- b. is seeking relief (other than to set aside or vacate a death sentence) under 28 U.S.C. § 2241, § 2254, or § 2255;
- c. is charged with civil or criminal contempt who faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to

compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

- e. is proposed by the United States attorney for processing under a pretrial diversion program; or
- f. is held for international extradition under chapter 209 of title 18, United States Code.

B. When Counsel Shall Be Provided. Counsel shall be provided to eligible persons when feasible after they are taken into custody, when they appear before a judicial officer, when they are formally charged or notified of charges if formal charges are sealed, or when a judicial officer otherwise considers appointment of counsel appropriate under the Act or this Plan, whichever occurs first. Appointment of counsel may be made retroactive to include representation furnished prior to the appointment date.

C. Number and Qualifications of Counsel.

- 1. Number in a Non-Capital Case. More than one attorney may be appointed in any case determined by the court to be complex.
- 2. Number in a Capital Case. In a capital case, the following applies:
 - a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom is knowledgeable in the law applicable to capital cases. If necessary for adequate

representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4)(B), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Because of the complex, demanding, and protracted nature of death penalty proceedings, it may be advisable to appoint at least two counsel.

3. Qualifications. Qualifications for appointed counsel shall be determined by the court. In a federal capital case, appointments shall be made in accordance with 21 U.S.C. § 848(q)(4)(A) and (5), and the court shall consider the recommendation of the Federal Public Defender. In a death penalty habeas corpus proceeding, the court shall appoint a member or members of the death penalty habeas corpus panel or other attorney who qualifies for appointment pursuant to section 21 U.S.C. § 848(q)(4)(B).

D. Eligibility for Representation.

1. Fact Finding. The determination of eligibility for representation under the Act is a judicial function to be performed by a judicial officer after making appropriate inquiries concerning the person's financial condition. Relevant information bearing on financial eligibility must be provided by the person on a financial eligibility affidavit or under oath in open court before a judge or magistrate judge.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her

representation, counsel shall advise the court unless the information is protected as a privileged communication.

3. Partial Payment or Reimbursement. If at the time of appointment or any time thereafter the court finds that the person furnished representation is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of the person, the court shall take appropriate action, which may include terminating the appointment of counsel, ordering partial payment by the person furnished representation, or permitting assigned counsel to continue to represent the party with part or all of the cost of representation paid by the person furnished representation.

- E. Public and Private Counsel. This Plan provides for legal services by a federal public defender organization. The Plan also provides for appointment and compensation of private counsel.

IV. FEDERAL PUBLIC DEFENDER'S OFFICE.

- A. Recognition of Existing Organization.

1. The Federal Public Defender's Office for the Northern District of Texas, previously established in this district pursuant to the provisions of the Act, shall continue to operate pursuant to the provisions of subsection (g)(2)(A) of the Act and the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*).
2. The Federal Public Defender's Office shall be capable of providing legal services throughout the district.

- B. Appointment. An assignment shall be made in the name of the “Federal Public Defender’s Office” when a judicial officer determines such assignment is appropriate. The Federal Public Defender must designate a staff attorney to work on each assigned case and notify the court in writing of the assignment.

V. PRIVATE ATTORNEYS.

- A. Establishment of CJA Panel. The existing, previously established panels of eligible attorneys (“CJA panels”) who are willing to provide representation under the Act are hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the panels of private attorneys under the Act is found at Appendix I of this Plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys shall be appointed in a substantial proportion of cases in which the accused is determined to be eligible for representation under the Act. “Substantial” shall be defined as approximately twenty-five percent annually of the appointments under the Act.

VI. DUTIES OF APPOINTED COUNSEL.

Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

- A. Professional Conduct. Attorneys appointed pursuant to the Act shall conform to the highest standards of professional conduct including, but not limited to, provisions of the American Bar Association’s *Model Rules of Professional Conduct*. Counsel shall

promptly notify the court in writing if action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar.

- B. No Receipt of Other Payment. Appointed counsel may not require, request, or accept payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- C. Continuing Representation. Once counsel is appointed under the CJA, representation shall continue until: 1) the matter, including appeal or review by certiorari, is closed; 2) substitute counsel has filed a notice of appearance; 3) an order has been entered allowing or requiring the person represented to proceed *pro se*; or 4) the appointment is terminated by court order. The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

VII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody or otherwise may be entitled to counsel under the Act and who has requested counsel, whether he or she is financially able to secure representation and shall, when a person indicates he or she is not able, arrange to have the person promptly presented before a judicial officer for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. If counsel has not been appointed prior to the pretrial services interview and the defendant so requests, the pretrial services officer will obtain the necessary financial information during the pretrial interview and have the defendant execute a financial affidavit (CJA Form 23) for submission to the court.

VIII. MISCELLANEOUS.

- A. Forms. Standard forms approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. An attorney seeking compensation for representation under the Act shall submit each claim to the clerk's office on the appropriate CJA payment voucher. The clerk's office shall review the voucher for mathematical accuracy and conformity with CJA guidelines, and, if correct, forward it to the appropriate judicial officer for consideration. An appointed counsel may not claim compensation for services furnished by a partner or associate, or counsel who is not a partner or associate, without prior authorization by the court. Counsel seeking fees in excess of the statutory case compensation maximum must submit a completed form, provided by the clerk for such purpose, that details the services rendered and supports the claim that waiver of the maximum is necessary to provide fair compensation. The court will make reasonable effort to avoid delays in reviewing vouchers and submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

IX. EFFECTIVE DATE.

This Plan is hereby adopted this _____ day of June, 2000 and shall take effect when approved by the Judicial Council of the Fifth Circuit.

ENTERED FOR THE COURT ON June _____, 2000.

CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT on
_____, 2000.

CHIEF JUDGE, COURT OF APPEALS

APPENDIX I

PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANELS OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

I. OBJECTIVE.

The objective of the Plan for the composition, administration, and management of the panels of private attorneys under the Criminal Justice Act is to establish a system whereby a panel of private attorneys may be screened, trained, qualified, and selected to represent criminal defendants in this court who, pursuant to the CJA Plan, are financially unable to obtain adequate representation.

II. CRIMINAL JUSTICE ACT COMMITTEE.

The chief judge shall appoint members of a Criminal Justice Act (CJA) Committee to assist the district in administration of the Criminal Justice Act and make recommendations to the court as appropriate. The CJA Committee shall consist of one district judge, one magistrate judge, at least two experienced criminal defense attorneys, the federal public defender, and the clerk of court. The latter two members shall serve ex officio. The district judge shall serve as the chair of the Committee.

III. PANEL COMPOSITION.

Counsel furnishing representation under the CJA Plan (“Plan”) shall be selected from a panel of attorneys designated or approved by the court or from a defender organization furnishing representation pursuant to the Plan.

A. CJA Panels.

1. Composition. The panels of private attorneys previously established in the Northern District of Texas pursuant to the provisions of the Act are hereby recognized. The court may add an attorney in accordance with the procedures described below. Continued membership on a panel is conditioned on demonstrated proficiency and ability to represent those who cannot afford counsel.
2. Eligibility. An attorney who serves on a CJA panel must be a member in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, the Bail Reform Act, and local criminal rules for the Northern District of Texas. The attorney shall have practiced law for at least four years, unless the court determines the attorney has sufficient trial or other relevant experience to warrant waiver of this requirement. The attorney must maintain a practice in a city and county in close proximity to the county in which court is held.
3. Adding Attorneys.
 - a. Dallas Division. A magistrate judge shall be designated to oversee the selection of attorneys for the panel in the Dallas division. The Dallas Division panel will be comprised of no fewer than 150 nor more than 300 skilled members to ensure sufficient representation of the diversity of the attorney population. The clerk's office shall make application forms for membership on the panel available on request and shall regularly solicit qualified applicants to maintain the size of the panel. In addition, the clerk's office shall be responsible for the

day-to-day operations required for management of the panel. An attorney desiring to be added to the panel shall submit an original and three copies of the completed application to the clerk's office. The clerk will review each application to ensure the attorney meets minimum qualifications described in II.A.2. above, then transmit the application to the designated magistrate judge. The magistrate judge will submit a recommendation for membership to the Dallas division district judges. The district judges will decide whether to add an applicant to the panel and communicate their decision to the magistrate judge. In an exceptional circumstance, the judges may grant membership to an attorney who does not maintain an office in the district. Ongoing training of panel members to ensure a high quality of representation and proficiency in federal criminal defense work shall be conducted by the Federal Public Defender's office.

- b. Other Divisions. Each attorney who resides or practices in a county served by one of the other divisions shall, when admitted to practice, complete an approved CJA application form. The magistrate judge in the division shall review each application form and determine if the applicant is qualified. If the applicant is qualified, the magistrate judge shall forward his/her application form to the clerk's office. The clerk's office will add the qualified attorney to the panel. Additionally, a judge or magistrate judge in a divisional office may, by order to the clerk of court finding qualifications required by II.A.2. above, add the name of any other attorney to the panel in his or her division.

c. Death Penalty Habeas Corpus Panel. A magistrate judge shall be designated to oversee the selection of attorneys for the district-wide death penalty habeas corpus panel. The clerk's office shall make application forms for membership on the death penalty habeas corpus panel available on request. An attorney desiring to be added to the panel shall submit an original and three copies of the completed application to the clerk's office. The clerk will review each application for completeness, then transmit it to the designated magistrate judge. The magistrate judge will submit a recommendation for membership to the district judges. The district judges will decide whether to add an applicant to the death penalty habeas corpus panel and communicate their decision to the magistrate judge. The judges may grant membership to an attorney who does not maintain an office in the district.

4. Removing Attorneys. To be removed from the Dallas voluntary panel, an attorney should submit a written request to the court using an approved form. Any district judge may, for good cause, remove the name of an attorney from a panel.

B. Associates Panel. The CJA Committee may establish a voluntary "Associates Panel" consisting of attorneys who do not have the experience required for membership on a CJA panel. Associates may be assigned by the court to assist panel members in a "second chair" capacity. Associates are not eligible to receive appointments independently and shall not be eligible to receive compensation for their services in assisting CJA panel members. Prior service on the Associates Panel

is not a requirement for membership on a CJA panel, nor will service on the Associates Panel guarantee admission of an attorney to a CJA panel.

IV. SELECTION FOR APPOINTMENT.

- A. Maintenance of List and Distribution of Appointments. The clerk's office shall maintain a current list of attorneys included on each panel, with current office addresses and telephone numbers. The clerk's office shall also maintain a record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's Office and private attorneys, according to the formula described in the Plan for the district.
- B. Method of Selection. Appointments from the list of private attorneys shall be made on a random rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, the attorney's experience or language proficiency, geographical considerations, and/or availability. This procedure should result in a balanced distribution of appointments and compensation among the members of each panel and quality representation for every CJA defendant.

On determination of need for the appointment of counsel, the judge or magistrate judge shall notify the clerk's office of the need for counsel. The clerk shall advise the judge or magistrate judge of the name, address, and telephone number of the next available panel attorney.

V. COMPENSATION.

Claims for compensation shall be submitted, on the appropriate CJA voucher to the clerk's office. The clerk shall review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*). If correct, the clerk shall forward the claim form to the presiding judge or magistrate judge for consideration and action.

Payment of fees and expenses to appointed counsel and payment for investigative, expert, and other services shall be made in accordance with 18 U.S.C. § 3006A and the rules, regulations and guidelines that have been or may be prescribed from time to time by the Judicial Conference of the United States and the Administrative Office of the United States Courts.